FAIRFIELD MINING CO., INC.

IBLA 84-840 Decided October 25, 1985

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring null and void ab initio the Alameda No. 4 and Alameda No. 5 placer mining claims. IMC 22837-22838.

Affirmed as modified.

1. Mining Claims: Withdrawn Land--Public Records--Withdrawals and Reservations: Effect of

   Where the official records of the Department disclose that mining claims were located on land withdrawn from location under the mining law, those claims are null and void ab initio, and the fact that the withdrawal was overlooked in an earlier proceeding does not bar the Department from later asserting the withdrawal.

2. Mining Claims: Powersite Lands--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Powersite Lands--Withdrawals and Reservations: Powersites

   A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1982), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

APPEARANCES: John F. Varin, Esq., Gooding, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Fairfield Mining Company, Inc., has appealed from the June 19, 1984, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the Alameda No. 4 and Alameda No. 5 placer mining claims null and void ab initio. The background of this case must be set forth in detail in order to understand our ruling in this case.

In a November 24, 1981, decision BLM declared certain mining claims, including the Alameda Nos. 4 and 5, null and void ab initio, to the extent the claims included lands withdrawn by Public Land Order No. (PLO) 3396, dated May 16, 1964, 29 FR 6683 (May 22, 1964). No mention of Power Site

Classification 255 dated June 11, 1930, was made in that decision. Fairfield appealed that decision, as it related to the Alameda Nos. 4 and 5. In Fairfield Mining Co., 66 IBLA 115 (1982), the Board stated at pages 118-19:

> Initially, we will discuss the record facts concerning the Alameda No. 5 claim. Appellant has provided a copy of placer mining location notice for the Alameda No. 5 claim which was recorded in Camas County, Idaho, on June 23, 1952 (Exh. B attached to statement of reasons). This notice describes a claim of 80 acres located by four co-locators. The copy of the location notice for the Alameda No. 5 claim dated February 21, 1974, names eight co-locators and describes 160 acres. Appellant has termed this 1974 location notice an "amended" location. Clearly, it is not. Although the 1974 location embraces the 80 acres included in the 1952 location, it also describes 80 additional acres. The Board held in Lairy Brookshire, 56 IBLA 73 (1981), that a location notice could not be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice only describes new land not contained in the original location.
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> To the extent that the 1974 location of the Alameda No. 5 claim describes additional land it must be considered a new location or a relocation. As such, the rights of the locators must date from the 1974 location. Since that location was subsequent to the 1964 withdrawal, to the extent the land added in the 1974 relocation of the Alameda No. 5 lies within the withdrawn area it was properly declared null and void ab initio by BLM.
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> We now turn to the Alameda No. 4 claim and the remainder of the Alameda No. 5. With respect to the Alameda No. 4 claim both the 1952 location notice (Exh. A attached to the statement of reasons) and the 1974 location notice name eight co-locators and describe the same 160 acres.
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> While the 1974 location could be construed as an amended location, there is presently no showing in the record that appellant is the successor to an unbroken chain of legal title to the claims extending back before the withdrawal of the land in 1964, as suggested in the statement of reasons. * * *
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> In United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971), the Court of Appeals for the Ninth Circuit held that a hearing is required where there is a disputed issue of fact whether the interests of the present mining claimant are adverse to the interests of prior locators (i.e., whether the filing is a "relocation") or whether instead the present owner was the successor to these earlier interests (i.e., whether the filing is an "amended location"). As appellant may be able

> to establish an unbroken chain of title through previous claimants back to the 1952 location, which would predate the withdrawal, it is appropriate to refer the matter for a hearing to allow the opportunity to do so. American Resources, Ltd., [44 IBLA 220 (1979)]. Appellant's request for a hearing is granted with respect to the Alameda No. 4 claim. The request is also granted with respect to the remainder of the Alameda No. 5 claim. Appellant may be able to establish a chain of title back to the 1952 location for the 80 acres common to the 1952 and 1974 locations. [Footnotes omitted.]

Thus, the purpose of the Board's referral to the Hearings Division was to allow Fairfield the opportunity to show that the 1974 filings were, in fact, amended locations, as it had contended in its appeal to the Board.

On December 2, 1983, Administrative Law Judge Rampton issued a decision vacating the November 1981 BLM decision as it related to the two claims. The basis for his decision was a November 1, 1983, stipulation by counsel for Fairfield and counsel for BLM that the 1974 location notice for the Alameda No. 4 claim was an amended location, rather than a relocation, and that Fairfield held title through an unbroken chain of title leading back to the original location. The parties further stipulated that the 1974 location notice for the Alameda No. 5 claim was an amended location for that part of the claim embraced by the 1952 original location boundaries.

Subsequently, BLM received a letter from the Forest Service dated June 1, 1984, stating:

> Based on the enclosed documents, we request the Bureau of Land Management (BLM) issue a decision declaring all of the original Alameda No. 5 placer claim and that portion of the Alameda No. 4 placer claim located within the withdrawn lands encompassed by the June 11, 1930, Power Site Classification No. 225 [sic] (see map No. 1) null and void ab initio. We also request that the decision declare all of the amended ALAMEDA #5 Placer Claim (IMC-22838) and that portion of amended ALAMEDA #4 Placer Claim (IMC-22837) located within the exterior boundary of the June 11, 1930, Power Site Classification No. 255 null and void ab initio because the November 1, 1983, Stipulation confirms that the amended claims have an unbroken chain of title leading back to the original locations * * *.

On June 19, 1984, BLM issued its decision declaring the 1952 locations of Alameda Nos. 4 and 5 null and void ab initio because they were made when the lands were withdrawn by the powersite classification. 1/ BLM further stated:

> Alameda No. 5 was amended February 21, 1974, as recorded March 28, 1974, to describe 160 acres with eight locators.

1/ The record shows that Power Site Classification 255 was canceled as to the lands in question on Nov. 4, 1971.

> Because Alameda No. 5, located June 10, 1952, is invalid and declared null and void ab initio in its entirety, the February 21, 1974, location is considered a new location in its entirety.
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> Alameda No. 5 was located in sec. 3, T. 4 N., R. 13 E., B.M., Idaho. On May 18, 1964, Public Land Order 3396 withdrew lot 6, NW 1/4 SW 1/4, sec. 3, T. 4 N., R. 13 E., B.M., from prospecting, location, entry and purchase under the United States mining laws.
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> As Alameda No. 5 was located February 21, 1974, after the land was closed to mineral entry, that portion of the claim located within lot 6, NW 1/4 SW 1/4, sec. 3, T. 4 N., R. 13 E., B.M., is invalid and declared null and void ab initio.
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> * * * This decision is to declare null and void the original 80 acres described in the 1952 and 1974 notices which fall within PLO 3396.

Fairfield filed a timely appeal. In its statement of reasons Fairfield states that it has been advised that the original filings for the two claims are null and void ab initio, but the "amended" locations for the claims filed on 1974 qualify as "relocations." Fairfield assumes that the 1974 filings are valid. It disputes that part of the BLM decision which declares null and void the portion of the 1974 location of the Alameda No. 5 in lot 6 and the NW 1/4 SW 1/4, sec. 3, T. 4 N., R. 13 E., Boise Meridian, the land withdrawn by PLO 3396.

For purposes of the appeal, Fairfield limits its arguments to only this described portion of the No. 5 claim. Fairfield believes that the earlier actions in this case preclude a finding of invalidity as to its 1974 location of Alameda No. 5 for the lands within the PLO 3396 withdrawal. It contends that the doctrines of res judicata, administrative finality, equitable estoppel, and/or collateral estoppel support the validity of its location. None of the doctrines cited by Fairfield as support for its argument are applicable, however. Nor do they preclude a finding that the 1952 claim locations are null and void ab initio.

[1] The principle of res judicata, and its counterpart, finality of administrative action, do not bar the Department from enforcing the law. See Nellie McLaughlin, 61 IBLA 347, 350 (1982). Where the official records of the Department disclose that mining claims were located on land withdrawn from location under the mining law, those claims are null and void ab initio, and the fact that a withdrawal was overlooked in an earlier proceeding does not bar the Department from later asserting that withdrawal. United States v. Gassaway, 43 IBLA 382, 387-88 (1979). 2/

2/ Admittedly, the failure of BLM to identify the powersite classification in its 1981 decision was unfortunate and has engendered much confusion in this case; however, BLM may not now ignore that withdrawal.

Equitable estoppel is not available in this case because one of the elements of estoppel is that the party asserting estoppel must be ignorant of the true facts. See Tom Hurd, 80 IBLA 107 (1984). The withdrawals in this case were matters of public record. While appellant asserts that the Department must be presumed to have had knowledge of the withdrawal at the time of its original adjudication, so, too, must appellant similarly be charged with constructive knowledge. See John Plutt, 53 IBLA 313 (1981). Therefore, Fairfield cannot claim ignorance of the true facts.

[2] We turn now to consideration of each of the claims--first, the Alameda No. 4. BLM declared the 1952 location of this 160-acre claim null and void ab initio because it had been located when the lands were withdrawn from mineral location by the powersite classification. Mining claims located prior to the passage of the Mining Claims Rights Restoration Act on August 11, 1955, 30 U.S.C. § 621 (1982), on lands withdrawn from mineral entry for a power project are null and void ab initio. That Act did not give life to claims located on withdrawn land prior to the passage of that Act. J. W. Roberts, 79 IBLA 279 (1984) and cases cited. That part of BLM's decision declaring the 1952 location of the Alameda No. 4 claim null and void ab initio is correct. 3/

Although the BLM decision made no mention of the 1974 location of the Alameda No. 4 claim, we note that the case file contains correspondence from BLM officials to Fairfield and others indicating that the BLM decision had no effect on the 1974 location of Alameda No. 4 and that this location qualified as a "relocation."

Our analysis of that 1974 location is that it is neither an amended location nor a relocation, but an original location of the claim. In the prior appeal to this Board Fairfield vigorously argued that the 1974 location was an amended location. We ordered a hearing so that Fairfield would have the opportunity to prove that point. Counsel for BLM and counsel for Fairfield waived a hearing and stipulated that the 1974 location was, in fact, an amended location, not a relocation. At that time both parties were apparently unaware of the June 11, 1930, powersite withdrawal. An original location which is null and void ab initio is not subject to amendment. McEvoy v. Hyman, 25 F. 596, 600 (C.C.D. Colo. 1885). Thus, the parties' stipulation is of no moment; there could be no amendment of the void 1952 location. Likewise, the 1974 location cannot be considered a relocation. There can be a relocation only if there is a prior valid location. Zerres v. Vanina, 150 F. 564 (9th Cir. 1907); see American Law of Mining, § 38.04[1]

3/ The June 1, 1984, letter from the Forest Service to BLM requesting that the claims be declared null and void ab initio had various attachments. One is a map depicting the 1952 locations of the Alameda Nos. 4 and 5 claims. That map shows a small portion of the northeast and northwest corners of the claim lying outside the withdrawn area. Only that portion of the 1952 Alameda No. 4 claim within the withdrawn area is null and void ab initio.

(2d ed. 1984). Here there was none. Appellant's "amended" location is effective, if at all, only as an original location. 4/ See American Law of Mining, § 38.01[4] (2d ed. 1984).

The 1952 location of the Alameda No. 5 claim embraced 80 acres. The 1974 Alameda No. 5 location describes an area of 160 acres, more or less. 5/ In Fairfield Mining Co., 66 IBLA at 118, we explained that the acreage added in 1974 could not be considered an amended claim, but must be a new location or relocation. We then held since that location was subsequent to the 1964 withdrawal, which was still in effect in 1974, any of that land within the withdrawn area was declared null and void ab initio. The only acreage involved in the hearing referral by the Board was the 80 acres common to the 1952 and 1974 locations. Id. at 119. The parties stipulated that the 1974 location was an amendment of the 1952 location as to that 80 acres.

The BLM decision properly declared the 1952 location of the Alameda No. 5 claim null and void because it was located when the lands were withdrawn by the powersite classification. Because the 1952 location was void, there could be no amendment of the Alameda No. 5 claim, notwithstanding the stipulation. Thus, the 1974 location for the Alameda No. 5 claim must be considered a new location for 160 acres. The BLM decision recognized this when it further stated that because the 1952 location was null and void ab initio, "the February 21, 1974, location is considered a new location in its entirety." BLM then proceeded to declare null and void ab initio the 80 acres common to both the 1952 and 1974 locations because it fell within the PLO 3396 withdrawal. While it was proper for BLM to declare null and void ab initio that portion of the claimed acreage overlapping the PLO 3396 withdrawal, it is not clear from the record that the overlap is an 80-acre area common to both the 1952 and 1974 locations. In fact, a map dated April 4, 1984, prepared by the Forest Service and enclosed with its June 1, 1984, letter to BLM indicates the overlapping acreage is substantially less than 80 acres.

4/ We note that a copy of a document captioned "AMENDED PLACER LOCATION" for the Alameda No. 4 claim, was submitted for recordation in Camas County on Dec. 16, 1981, by counsel for Fairfield. The claim description in this notice does not follow either the 1952 location description, the description found in the Feb. 21, 1974, location recorded Mar. 28, 1974, or the quitclaim deed from eight colocators to Fairfield Mining Company and Idaho Corporation, dated Dec. 6, 1974. The Dec. 16, 1981, notice describes less acreage and appears to be based on an actual survey. In addition, although the December 1974 quitclaim deed shows Fairfield and Idaho Corporation, as grantees of the claims, only Fairfield is listed on the December 1981 location notice.

5/ We note with regard to the 1974 location of the Alameda No. 5 claim that the record contains a copy of "AMENDED PLACER LOCATION" for the Alameda No. 5 claim, recorded in Camas County on Dec. 16, 1981. The record shows that the document was submitted for recordation by counsel for Fairfield on that date. The claim description in this notice differs from that in the Feb. 21, 1974, location notice, recorded Mar. 28, 1974, and from that in the quitclaim deed from eight co-locators to Fairfield Mining Company, and Idaho Corporation, dated Dec. 5, 1974. It describes less acreage and appears to be based on an actual survey. In addition, although the December 1974 quitclaim deed shows Fairfield and Idaho Corporation, as grantees of the claim, only Fairfield is listed on the December 1981 location notice.

We conclude the 1952 location of the Alameda No. 4 claim was properly declared null and void ab initio by BLM to the extent it was located on the powersite withdrawal. The 1974 location of the Alameda No. 4 claim was a new location. The 1952 location of the Alameda No. 5 claim is also null and void ab initio to the extent it was located on the powersite withdrawal. The 1974 location, which was stipulated to as an amended location, is not an amendment because no amendment of a void location is possible. It is a new location for 160 acres. It is null and void ab initio to the extent it overlaps land included in the PLO 3396 withdrawal. 6/

Accordingly, pursuant to the authority delgated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Bruce R. Harris
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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R. W. Mullen
Administrative Judge

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6/ It is also clear that as to the acreage in the 1974 location which embraces land in PLO 3396, no prescriptive rights under 30 U.S.C. § 38 (1982) could be established after the passage of the Mining Claims Rights Restoration Act of August 11, 1955, as the land had been segregated in 1954 by the filing of an application for withdrawal by the Forest Service. See 43 CFR 295.10 (1954).